

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**

Washington, DC 20554

In the Matter of

Improving Public Safety Communications in)  
the 800 MHz Band

Consolidating the 900 MHz Industrial/Land  
Transportation and Business Pool Channels

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WT Docket No. 02-55

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To: The Commission

**REPLY COMMENTS OF MOBILE RELAY ASSOCIATES TO  
COMMENTS OF VARIOUS PARTIES UPON  
SUPPLEMENTAL COMMENTS OF THE “CONSENSUS PARTIES”**

Mobile Relay Associates (“MRA”), by its attorney and pursuant to Public Notice, *Wireless Telecommunications Bureau Seeks Comments on “Supplemental Comments of the Consensus Parties” Filed in the 800 MHz Public Safety Interference Proceeding*, DA No. 03-19 (WTB, released January 3, 2003) (“*Supplemental Request Notice*”),<sup>1</sup> hereby submits its Reply Comments in response to the various February 10, 2003 filings. The overwhelming majority of commenters oppose the so-called “Consensus Plan” (“Nextel Group Plan”), and agree with MRA’s observation that: 1) it is no consensus at all, and its supporters do not include those licensees who would be harmed by its implementation; 2) it represents a blatant attempt by Nextel to overcome the results of the General Category auction by effectively arrogating to Nextel all of the contiguous “cellular-ready” spectrum licenses purchased by others in Auction No. 34 and saddling the actual auction winners with replacement garbage spectrum that eliminates those other auction winners as potential

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<sup>1</sup>These Reply Comments are timely filed. *See Order Extending Time for Filing of Comments*, DA 03-163 (WTB, released January 16, 2003).

competition for Nextel;<sup>2</sup> 3) although totally unnecessary for the implementation of the Plan, it calls for Nextel to exchange low-value spectrum at 700 MHz and 900 MHz for high-value spectrum at 1900 MHz, in violation of Section 309(j) of the Communications Act of 1934 as amended (“Act”), 47 U.S.C. §309(j); and 4) it maximizes disruption to existing, non-interfering licensees while providing only partial amelioration of any existing interference to Public Safety, thus failing to meet the stated goals which the Commission set forth when it initiated this proceeding.

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<sup>2</sup>Specifically, the Nextel Group Plan proposes to change 851-854 MHz from “cellular-ready” spectrum (as it is today and as the Commission advertised it before Auction No. 34) into Public Safety spectrum, and to change 866-869 MHz from Public Safety into “cellular-ready” spectrum. But although numerous other SMR licensees at 851-854 MHz, under the Nextel Group Plan, only Nextel would exist at 866-869 MHz. Thus, the Nextel Group Plan in essence calls for Nextel to become the exclusive licensee in the “cellular-ready” 3 MHz band without having to buy out the other SMR licensees, and without having to worry about those other licensees holding any “cellular-ready” spectrum with which to compete.

Several commenters proposed alternative proposals which are far superior to Nextel's, among them the United Telecom Council ("UTC"), Preferred Communication Systems, Inc. ("Preferred") and Access Spectrum, LLC ("Access"). While each of these other plans may need some tweaking or additional detail,<sup>3</sup> each constitutes an honest effort to simultaneously minimize interference and minimize disruption to existing, non-interfering licensees, and each constitutes an effort to avoid either a confiscatory taking of property from other licensees or the award of an undeserved windfall to Nextel. Any of these would better serve as the foundation for a new consensus to be negotiated, a consensus to be forged among those who would be forced to relocate, as opposed to the Nextel Group "consensus" (a consensus among those who get to stay where they are).

The various comments reveal a basic truth -- the Nextel Group Plan, even as supplemented, does not pass the basic smell test. At bottom, that Plan is accurately summarized as follows.

1) The Commission decided, after notice and opportunity for comment, that: a) 700 MHz guardband spectrum would be subject to broadcast incumbents at least until 2007 if not longer and even then, must be used at least 50.1% by persons unaffiliated with the manager/licensee; b) SMR incumbents could not be forcibly relocated out of the cellular-ready and contiguous 800 MHz General Category spectrum or the 900 MHz SMR spectrum, and auction bidders would have to

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<sup>3</sup>For example, the Preferred proposal lacks sufficient detail (although Preferred has suggested that with more time, and perhaps more input from other licensees, that detail can be supplied). The Access proposal to compensate innocent licensees who have their spectrum confiscated by awarding auction voucher discounts is not workable, because although transferable, such vouchers are not liquid. Especially since so many of these vouchers would be handed out simultaneously, there would not be enough buyers of vouchers to enable sellers to sell for anywhere near the face value. Consistent with the due process clause of the Fifth Amendment, confiscation of spectrum should be compensated with money, either from auction proceeds or direct payments from other private persons acquiring valuable spectrum.

prepare their business plans accordingly; and c) to the extent that white space existed in the General Category Band or the 900 MHz SMR Band, it would be licensed to those who valued it the most, via auction, rather than just handed out to Nextel as a windfall.

2) On the basis of the Commission decisions above, auctions were held for 700 MHz spectrum, 800 MHz General Category spectrum and 900 MHz SMR spectrum, and private transactions occurred (or, failed to occur) in the secondary market. Nextel faced less bidding competition for the 700 MHz spectrum and more bidding competition (again, in both the auctions and secondary transactions) for the 800 MHz spectrum.

3) Nextel is the overwhelming cause of harmful interference to Public Safety at 800 MHz.

4) Under the Plan, Nextel gets to overturn the results of the various rulemakings and transactions (both auction purchases and private transactions based upon the rulemaking decisions), and obtain exclusive hold of both the cellular-ready 800 MHz spectrum and a virgin nationwide 1900 MHz block. Nextel gets to do this without having had to buy out 800 MHz incumbent licensees, without having to win the involved 800 MHz General Category auctions, and without having to face any competing bidders for the virgin nationwide 1900 MHz block, and with its low-valued 700 MHz and 900 MHz spectrum being treated as if the Commission rules which render them less valuable to bidders had not existed, for purposes of determining whether the deal is an “exchange” or a windfall.

If the Commission is truly serious about seeking a solution which does the most to reduce harmful interference while also minimizing disruption to existing licensees, then the Commission should call a meeting to which all affected persons would be invited, not just whom Nextel desires to include, and should choose one of the alternative proposals, not that of the Nextel Group, as the

starting point. The Nextel Group Plan is primarily designed to manipulate the regulatory system on behalf of Nextel's personal agenda, and only secondarily designed to ameliorate harmful interference. As such, that Plan cannot serve as even the jumping off point for developing a solution.

Respectfully submitted,

**MOBILE RELAY ASSOCIATES**

February 25, 2003

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